IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.7877 OF 2003

Hanmant Bapu Jagtap (Methe), .. Petitioner
Vs
1. Shri Sandeep Rajaram Jagtap
and ors .. Respondents

Mr Mandar Limaye, i/b Mr N.R.Bubna, for the petitioner.
Respondents, though served, absent.

CORAM : D.B.BHOSALE,J.
DATE : 03.10.2006
PC:

1. Heard Mr Limaye, learned counsel for the petitioner. None is present for the respondents, though served. Rule. Returnable forthwith. By consent, the rule is heard finally.

2. By this writ petition, the petitioner has impugned the order dated 6.9.2003, by which the petitioner's application at Exhibit-97 in R.C.S.No.176 of 1999 under Order 6, Rule 17 of CPC, has been rejected. By that application, the petitioner-defendant sought to introduce an adoption of defendant no.1 by one Akkubai Rau Methe on 12.8.1960. It was registered Adoption Deed. In the written statement, no reference was made to the adoption deed since the petitioner-defendant did not have a copy of the adoption

deed at that stage. However, in paragraph 3 of the written statement, a categoric statement was made by the petitioner-defendant no.2 that defendant no.1 had left the joint family consisting of all the defendants and, therefore, he has no concern with the joint family property. The trial Court rejected the application for amendment holding that defendant no.2, in his written statement, has admitted the status of defendant no.1 as a member of the joint family, which cannot be allowed to withdraw by way of an amendment. I perused the written statement and the amendment sought. In my opinion, by no stretch of imagination the petitioner-defendant no.2 could be said to have withdrawn the amendment. By way of amendment, the petitioner has only explained as to why did he state in the written statement that defendant no.1 had left the joint family. No where in the written statement the petitioner has admitted the status of defendant no.1 as member of the joint family. Moreover, this being a suit for partition, in my opinion, the learned Judge ought to have allowed the amendment, as prayed for by the petitioner-defendant. The finding recorded by the court below that by way of amendment the petitioner-defendant seeks to withdraw the admission, is not correct and must be set aside. In the circumstances, this writ petition is allowed. Consequently, the application at Exhibit-97 seeking

amendment stands allowed. The petitioner to carry out the amendment within four weeks from the date of receipt of this order. The trial court to proceed with hearing of the suit and dispose it of expeditiously. Rule is accordingly made absolute.

(D.B.BHOSALE,J.)